

Socialist Interpretations of Legal History. The Histories and Historians of Law and Justice in the GDR, Poland and the Baltic States under the Reign of Communism.

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The Abstracts:

Adolfo Giuliani: Eastern Europe and the legal historian. Changing images of the Eastern legal tradition: Roman law, canon law, Pandektism and anti-Pandektism

Western legal historians have traditionally struggled to understand Eastern European legal history. This paper argues that any hope to clarify this area of legal-historical studies requires first to clarify a methodological question about the nature of the Eastern legal tradition: What is Eastern legal history a history of? To this purpose this paper examines four competing approaches:

The first approach, by Paul Koschaker, is part of a broader narrative that famously asserted that true Europe means Roman law, with the consequence of leaving Eastern legal systems outside the main European development.

The second approach, by Harold Berman (1983), focuses on the European development of canon law, which united East and West in an overarching legal tradition based on a dialogue between spiritual and secular law.

The third approach, by Tomasz Giaro, focuses on the European dimension of 19th c. codifications; they determined a legal homogeneity which went in hand with the Eastern reception of Pandektism in a way that deeply shaped Eastern legal science.

The present paper argues that, besides the mid-19th century reception of Pandektism, late-19th century Eastern legal science received the anti-Pandektist philosophies derived from Rudolf Jhering. They determined a spread of antiformalist positions that connect to similar approaches developed in the early 20th century at a European level.

Michal Kopeček: The Socialist Conception of Human Rights and its Dissident Critique. East Central Europe 1960s-1980s

Much has been written about human rights language as a keystone of democratic dissent in Eastern Europe as well as about its damaging impact on the communist dictatorships - the so called "Helsinki effect." This paper analyses the less familiar criticism of the core of the socialist theory of human rights and discusses whether this criticism proved to be particularly damaging for the socialist regimes' legitimacy, self-esteem, and international standing, leading to their defensive stance in this sphere. Simultaneously, it will question, to some extent, the prevailing and rather one-sided "liberal" reading of dissident human rights theory itself.

With this aim in mind, the paper begins with the specific "developmental" socialist conception of human rights elaborated in the 1950s and the 1960s by prominent legal scholars and philosophers such as I. Szabó, I. Kovács, H. Klenner, J. Grospič, M. Marković, L. Tadić, and outlines how this theory served as a tool of self-confident state socialist human rights politics in the first decades of the Cold War. Second, it follows the diverging paths of this socialist human rights theory during the period of consolidation and the authoritarian turn in the late 1960s and the 1970s. Third, the paper turns to some of the 1970s-80s dissident criticism of human rights abuses in communist countries. It disregards the best-known cases, which served to emphasize encroachments upon civil and political rights and freedoms, focuses instead on critical approaches (J. Tesař, J. Šabata, O. Solt, M. Duray, Solidarity's Charter of Workers Rights) directed at the heart of the socialist theory of human rights, that is the abuses and unfulfilled promises in the area of social, economic and - prominently in the Hungarian case - cultural rights.

Marju Luts-Sootak: Strategies of covert resistance in teaching and studying legal history at the University of Tartu in the Soviet era

Lawyers have always been more closely associated with state power than natural scientists or, for example, historians. Compared to the other colleagues in the Faculty of Law, it was the legal historians who consistently had the best opportunities to diverge from the Soviet political mainstream. To a degree, this was facilitated already by the general academic framework provided in Moscow. There were rather a lot of compulsory legal historical subjects, which included general or world legal history, the legal history of the Soviet Union and the legal

history of the Estonian SSR. Concerning the last two subjects, it should be noted that the course titles suggest rather less than what was actually required by the all-Soviet curriculum. The legal history of the Soviet Union not only included the period from the foundation of the USSR in 1922, or from the October revolution of 1917, but also encompassed the whole of the legal history of the then-Soviet territory through the ages. The same held true about the legal history of the Estonian SSR – it, too, covered legal history, as it were, from the beginning of time. In my presentation, I will take a closer look at the means employed by the academics teaching the legal history courses to make divergences possible from the official party-controlled views, and to what extent the students were aware of such tricks and ingenuities.

Lauri Mälksoo: "The Concept of Human Rights in the Soviet Legal and Political Thinking".

The evolution of the concept of human rights in the USSR is an interesting side-story of how the USSR transformed itself from inside and eventually disintegrated. The socialist concept of human rights was meticulously developed but eventually the Western liberal concept of human rights got the upper hand, introducing the new thinking in the Russian Constitution of 1993.

Martin Otto: We few, we happy few? Legal History in the GDR

The GDR claimed to be the first German „Workers and Peasants State.“ Their legal historians obviously did not care about this. They worked in a small niche and focussed for political reasons mostly German middle ages. Items of research were the famous law book „Sachsenspiegel“, early courts of appeal like „Schöppenstuhl“ („jury stool“) in Thuringia and Saxony or „Wismar Obertribunal“ (supreme court) for the Baltic area. Legal history was more local, but also more conservative and traditional than in Western Germany. Nature Law and enlightenment was a main focus at Halle University. Trials to construct a „marxist“ Legal History did not succeed and finished at last after „Babelsberg Conference“ in 1958. Research on the Prussian „Allgemeines Landrecht“ and Savigny were made, but had to face special challenges. „Modern“ items like the history of labour law or welfare legislation never played a role. Important parts of legal history like Roman Law, Church Law or constitutional history did at all not exist at the universities. Internationally recognized were research groups at the

Academies of Science in Berlin (Byzantine Law) and Leipzig (Sachsenspiegel, „Magdeburg Law“). Ties to legal historians in Western Germany, Austria and Scandinavia remained relatively strong during the whole period of the GDR. Most important German-speaking journal of Legal History „Savigny-Zeitschrift“ was also published in the GDR. The personal continuity was high, also in relation to other lawyers in the GDR. Some historians were famous like Gertrud Schubart-Fikentscher, first female law professor in Germany. But legal historians were a real minority. Their number was small and limited. During all the years of the GDR, Legal History was no part of regular legal studies. It was a discipline of scientific bystanders, isolated but international.

Sanita Osipova: Valdemars Kalnins (1907-1981) – the founder of the Soviet legal history in Latvia.

1. The development of Latvian legal history as a field of scientific research in the 20th century can be divided into several periods: research performed by the Baltic Germans, in which the legal history of Latvia has been viewed as a part of the German legal history, the national Latvian legal history of the inter-war period, characterised by a certain kind of “national romanticism”, Soviet legal history and modern Latvian legal history.
2. The leading professor of the Latvian Soviet legal history was Valdemārs Kalniņš who studied law in Latvia during the inter-war period and was educated in the tradition of the Latvian national legal history. During the Soviet occupation, while continuing to work at the University of Latvia, he was forced to review the Latvian legal history in accordance with the Soviet ideology, embedding into it the struggle between two antagonistic classes and viewing the state and the law as instruments of oppression of the working class.
3. The Soviet regime used general history and legal history to advance its political goals. A significant part of the Latvian Soviet legal history was used to present the past events as a process of oppression of the working class and the establishment of the Soviet regime as the beginning of a happy and just life. The legal history of this period among other things had to justify the Soviet occupation of the Republic of Latvia as its lawful accession to the USSR.
4. Despite the censorship and the strict boundaries of research in the field of legal history defined by the Soviet ideology, professor Kalniņš managed to maintain the continuity of

research in this field by including in his published papers, which were written in a politically correct manner, references to primary sources containing different information and the opinions of scientists of other generations.

Anton Rudokvas: Roman law studies in the USSR

In pre-revolutionary Russia the intensive study of Roman law was carried out by both lawyers and historians. This circumstance was due to the fact that, just as it was in Germany and other countries of continental Europe, Roman private law was considered by Russian lawyers as the foundation for the construction of civil law doctrine of the Russian Empire. But in the law faculties of the Soviet Union the serious Roman law studies did not continue, even if teaching of Roman private law was restored at the faculties of law of the main universities of the USSR from 1948.

For this reason, in the framework of our report we will talk about the study of the history of Roman law in general (that is, both public law and private law) by Soviet historians, who were specialists in the history of Ancient Rome, and were dealing with Roman law issues in the context of their researches of the history of Ancient Rome.

The Soviet government wanted to create a new historical science. For this purpose in 1924 all research institutes on social and economic sciences were united in the Russian Association of Research Institutes of Social Sciences led by the ideologist of the new Marxist historical science Michail Pokrovskiy (from May 1918 to the end of his life in 1932, - a Deputy People's Commissar of Education of the Russian Soviet Federal Socialist Republic).

Pokrovsky and his followers were actively engaged in the modernization of the historical process. In the writings of historians of the Pokrovsky school, different historical periods appear as alternating combinations of different economic structures, rigidly defining the social and political structures of society. This approach easily justified the direct extrapolation of modern phenomena into the past and the use of modern concepts to describe the social processes of past eras.

Thus, although formally few historians of the first years of Soviet power clearly opposed themselves to the new regime, the efforts of both its ideological supporters and its "fellow travelers" even then began the process of entropy of state ideology in the specification of its

provisions in relation to a particular sphere of social sciences. Obviously, under the screen of ideological uniformity in the first decade of Soviet Russia's existence, there was a pluralism of different opinions and their clashes. The relative cultural pluralism of this period obviously corresponded to the pluralism of the factional struggle in the Communist party of this period.

However, as it was after Christianity became the dominant religion in the Late Roman Empire, in Soviet Russia there was an objective need for ideological consolidation of the only true doctrine to determine the goals and methods of further development. The processes of ideological consolidation in the early 1930s ended the existence of factions in the Communist party. They also led to the revision of the new historical science formed in the previous decade.

The overthrow of the results of the domination of the historical school of Pokrovsky by the political leadership of the USSR began in 1934. As a result, opponents of the Pokrovsky school won the protracted discussion. The substitution of specific studies of historical sources with retrospective sociological speculation was no longer welcomed by the political authorities, and therefore had to give way to a more balanced approach, which was always advocated by a pupil of the old pre-revolutionary school. On the other hand, the eradication of theoretical constructions of the Pokrovsky school in the field of historical materialism began.

As a result, Soviet historians came to recognize the concept of the slave-owning formation and the specific ancient mode of production corresponding to it. Scientific research with such a focus has made a significant contribution to the knowledge of the provisions of Roman law in relation to the legal regulation of slave relations and in general economic relations in antiquity.

It is noteworthy that in the 1930s the leading Soviet historians of classical antiquity turned to the study of the formation of Imperial power in Rome, its legal embodiment and the social essence of Caesarism as a political phenomenon. This interest is clearly correlated with the strengthening of the regime of personal power of Joseph Stalin in the USSR.

The history of ancient societies was considered as a progressive process of the origin of slave-owning relations, their subsequent flourishing and final decomposition. Attention was focused on how the decomposition of the slave system resulted in the birth of the feudal relations in the depths of ancient society, which after the fall of the ancient world become the basis of a new, higher feudal formation.

In the late 1930s Soviet historians began to justify a special theory of the "slave revolution" in ancient Rome. This theory was developed under the influence of Stalin's statement that the slave revolution eliminated the class of slave owners and abolished the slave form of exploitation of working people. According to this doctrine, the whole development of ancient Rome was determined by the class struggle of slaves against slave owners. But since the Sicilian revolts and the rebellion of Spartacus took place many centuries before the fall of Rome, the creators of this theory came to the idea of a permanent «revolution of slaves», which lasted from the II century BC to the V century AD.

Stalin died in 1953. In 1956, the Twentieth Congress of the CPSU was held, which condemned Stalin's "cult of personality" and political repressions that took place during his reign. At the end of the party Congress was adopted a resolution of the Central Committee of the Communist party of the USSR called "On overcoming the cult of personality and its consequences." Among other things, it stressed the need for the creative development of Marxist-Leninist theory and the manifestation of initiative in the formulation of theoretical questions. There was also a demand for the elimination of dogmatism in ideological work. The attention of researchers - historians was focused on a thorough analysis of the material sources and the refusal to bring into science abstract theoretical constructions that have no basis in the material of historical sources. This was a direct invitation to the revision of the historical concepts established in the Stalin years.

Scrupulous and based on a solid source base of historical research, the studies of social, economic and legal aspects of slavery in ancient Rome undertaken in the 1950s - 1970s by Soviet researchers led step by step to a total revision of the concept of the ancient slave-owning formation established in the Stalin years.

Without denying the very concept of the slave-owning mode of production, these researchers demonstrated the diversity of the ancient economy, in which non-economic coercion to work was combined with the use of the types of economic relations of the market economy. As a result, they demonstrated that the concepts of "estate of slaves" on the one hand, and "class of slaves" on the other hand are not always the same. People who were slaves from the legal point of view can be divided into groups that belonged to different social classes from the point of view of Marxist analysis.

Further, on the material of the economic history of the Roman provinces, it was shown in detail how, along with the slave-owning method of production, other socio-economic structures

successfully coexisted in the Roman Empire. It was found that the main production cells of the Roman economy were not latifundia and not a large workshop-type manufactory, but a farm and a small craft workshop. It turned out that the standard of living and the level of exploitation of slaves employed in different types of enterprises differed significantly depending of their specialization. Further studies have shown that the main primary unit of the social structure of Roman society throughout its history remained the community as a self-governing association of free people.

In the end, by the time of the collapse of the Soviet Union, Soviet historiography finally abandoned the concept of the slave revolution as a factor that predetermined the transition from antiquity to feudalism of the middle ages. In essence, the historiography of ancient history in the late USSR, and in particular - the historiography of the history of Ancient Rome, differed from the modern Western literature of the issue only by its hypertrophied attention to the socio - economic aspects of ancient history and its commitment to economic determinism in explaining the phenomena of social life.

Adrian Schmidt-Recla: Getaway into the Middle Ages? Topics, methods and results of socialist legal historiography in Jena

This paper chooses a both personal and local approach to socialist interpretations of legal history. It examines topics and results of Gerhard Buchda's (1901-1977) own works and topics of the works of his scholars in Jena, where Buchda held the chair of German civil law, commercial law and German legal history from 1949 to 1967. Buchda is nowadays only little known as an expert of medieval Saxon law who studied the Sachsenspiegel as well as medieval communal law. 1945 he was dismissed by the University Halle, probably due to his membership in Nazi-organisations. Nevertheless he decided not to leave the Soviet occupation zone and gained a second chance in Jena. During his Jena years Buchda was the doctoral advisor for twelve doctoral theses. Against the background of Buchda's cv it is worthwhile to study whether his work and/or the theses of his Jena-scholars performed in favor of socialist legal historiography or not.

